

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings shows previously omitted reference number "32" in Fig. 3. This sheet replaces the original sheet including Fig. 3.

Attachment: Replacement Sheet

REMARKS

The above listed claim amendments and the following remarks are believed fully responsive to the Office Action. By this response, claims 1, 7, 15, 18, 20, and 24-29 have been amended and claims 2-6 and 13 have been cancelled. Claims 1, 7-12, and 14-30 remain pending in the Application and are presented for consideration and allowance.

Support for the Amendments

The amendments to the claims are supported by the application as filed. The amendment to claims 1, 18, and 26 are supported at page 10, line 25 to page 11, line 23, for example. The amendments to claims 15, 20, and 29 are supported at page 12, lines 1-16, for example. The amendments to claim 24 page 11, lines 16-23 and page 15, lines 5-10, for example.

Objection to the Drawings

The drawings stand objected to for failing to show the “inner opening 32” as described in the specification. The accompanying replacement sheet includes reference number 32 and with such amendment to FIG. 3 being fully supported by the application as filed. Entry of the amendment to the drawings and concomitant withdrawal of the objection is respectfully requested.

Objections to the Claims

Claim 7 stands objected to based upon the informality that “tot eh” should read “to the.” Claim 7 has been amended accordingly. As such, withdrawal of the objection is respectfully requested.

Claim 13 stands objected to for being in improper dependent form. Claim 13 has been cancelled. As such, withdrawal of the objection is respectfully requested.

Rejections Under § 112

Claim 28 stands rejected under §112, second paragraph as indefinite. Claim 28 as amended meets the definiteness requirements of § 112, second paragraph. As such, withdrawal of the rejection is respectfully requested.

Rejections Under §§ 102, 103

Claims 1-3, 9, 10, 13, 15-17, 24 and 25 stand rejected under § 102(b) as anticipated by G.B. Pat. No. 852,169 ("Baxendale"). Claims 1, 4-6, 11, 12, 14, 20, 21, 23, 26, and 28-32 stand rejected under § 102(b) as anticipated by G.B. Pat. No. 279,987 ("Pollock"). Claims 18, 19, 26, and 27 stand rejected under § 102(a) as anticipated U.S. App. Pub. No. 2003/0140570 ("Richmond"). Claims 7, 8, 22, and 33 stand rejected under § 103(a) as unpatentable over Pollock in view of U.S. Pat. No. 4,254,596 ("Wright").

Claim 1 relates, in part, to an adjustable surround for use with a fireplace, the surround including a first member, a second member, a first side member having a front face, a second side member having a front face, a first overlap member, a second overlap member, and a third overlap member. The first and second members are movable relative to each other to vary the width of the surround. The first overlap member is configured to cover the spacing between the first ends of the first and second members. The second overlap member has an inner contoured surface that matches the front face of the first side member to provide a seamless appearance between the first side member and the second overlap member and a bottom adapted to rest against a floor, where the second overlap member is configured to cover a spacing between the second end of the first side member and the floor. The third overlap member has an inner contoured surface that matches the front face of the second side member to provide a seamless appearance between the second side member and the third overlap member and a bottom adapted to rest against the floor, where the third overlap member is configured to cover a spacing between the second end of the second side member and the floor. Relative movement between the second and third overlap members and respective first and second side members adjusts a height of the surround. For at least the following reasons, claim 1 is patentable over the cited references.

For example, the undersigned is unable to find provision for, nor are Baxendale, Pollock, or Wright cited as providing, second and third overlap members having inner contoured surfaces that match front faces of the first and second members to provide a seamless appearance between the first and second side members and the second and third overlap members and bottoms adapted to rest against a floor, where the overlap members are configured to cover spacing between the second ends of first and second side members and the floor. With respect to Richmond, slots 34, 36 and lower end portions 37, 38 of Richmond do not teach, suggest, or otherwise provide such limitations. For example, the slots 34, 36 and lower end portions 37, 38 do not have a seamless appearance as shown in FIG. 5 (cited in the Office Action at p. 15). In fact, Richmond describes how the slots 34, 36 are oversized in width ("desirably sized to accommodate the surround leg position spacing adjustment"), which more likely teaches away from a seamless appearance between the slots 34, 36 and lower leg portions 37, 38. See, e.g., Richmond at para. 49. In view of at least the foregoing, claim 1 is allowable over the cited references.

Claim 15 as amended, relates, in part to a width adjustment surround for a fireplace, the surround including first and second top members arranged end to end in a generally horizontal orientation and defining a width of the surround, where the first and second top members are movable relative to each other to alter the width of the surround. The surround also includes first and second retaining members including surround mount portions secured to the first and second top members, respectively, and wall engagement portions extending outwardly away from the first and second top members, respectively. A wall mounting bracket is also included, where the wall mounting bracket includes a wall mount portion configured to extend along and be secured to a front surface of at least one of a fireplace and a wall structure adjacent to the fireplace and a surround engagement portion extending outward and upward from the wall mount portion to engage the wall engagement portions of the first and second retaining members, respectively. For at least the following reasons, claim 15 is patentable over the cited references.

For example, the undersigned is unable to find any provision for, nor are Baxendale, Pollock, or Richmond cited as providing, first and second retaining members including

surround mount portions secured to first and second top members, respectively, and wall engagement portions extending outwardly away from the first and second top members, respectively, and a wall mounting bracket having a wall mount portion configured to extend along and be secured to a front surface of at least one of a fireplace and a wall structure adjacent to the fireplace and a surround engagement portion that extends outward and upward from the wall mount portion to engage the wall engagement portions of the first and second retaining brackets, respectively. With respect to Wright, (cited in the Office Action as providing a “mounting bracket” and “separate retaining members”), none of the cited structures (e.g., “face 20”; “top support 30”; and “male members 32”) provides, for example, a surround engagement portion that extends outward and upward from a wall mount portion to engage wall engagement portions of first and second retaining brackets secured to first and second top members. Thus, the cited references fail to teach each and every element of claim 15. In view of at least the foregoing, claim 15 is allowable over the cited references.

Claim 18 as amended relates, in part, to a height adjustment surround for a fireplace, the surround including first and second overlap members that have contoured inner surfaces, a top, and a bottom adapted to rest against a floor adjacent the fireplace and that are configured to be coupled to first and second side members, respectively, to provide a seamless appearance and to cover gaps between the floor and the first and second side members. The cited references fail to provide the limitations of claim 18 as amended for at least reasons similar to those described above in association with claim 1. As such, claim 18 is allowable over the cited references.

Claim 20 as amended relates, in part, to a method that includes securing a retaining bracket to a top member, the retaining bracket including a surround mount portion secured to the top member and a wall engagement portion extending outwardly away from the second top member. A wall mounting bracket is secured to a front surface of at least one of a wall structure and a fireplace, the wall mounting bracket including a wall mount portion configured to extend along and be secured to the front surface and a surround engagement portion extending outward and upward from the wall mount portion. The top member is mounted to the front surface by engaging the surround engagement portion of the wall

mounting bracket with the wall engagement portion of the retaining bracket. The cited references fail to provide the limitations of claim 20 as amended for at least reasons similar to those described above in association with claim 15. As such, claim 20 is allowable over the cited references.

Claim 24 relates, in part, to a method of adjusting a size of a decorative surround for a fireplace, the surround having a width and including first and second horizontal members oriented generally horizontally and being aligned end to end. The method includes moving first and second horizontal members relative to each other to adjust the width of the surround; securing the first and second horizontal members to a front surface of at least one of the fireplace and a wall adjacent the fireplace; covering the ends of the first and second horizontal members with a first overlap member after securing the first and second horizontal members to the front surface; and securing the first overlap member to the first and second horizontal members. For at least the following reasons, claim 24 is patentable over the cited references.

For example, the undersigned is unable to find any provision for, nor are Pollock, Richmond, or Wright cited as providing covering the ends of first and second horizontal members with a first overlap member after securing the first and second horizontal members to a front surface as recited in claim 24. With respect to Baxendale, it is unclear how the member c (cited in the Office Action as “a first overlap member”) could be received over members a and b of Baxendale (cited in the Office Action as “a first member” and “a second member”) after the members a and b were secured to a fireplace or adjacent wall structure. See, e.g., FIG. 4 of Baxendale. In view of at least the foregoing, claim 24 is allowable over the cited references.

Claim 26 as amended relates, in part, to a method of adjusting a size of a decorative surround for a fireplace, including providing a seamless appearance between first and second overlap members and first and second side members, respectively; and contacting a bottom of the first and second overlap members with a floor structure in front of the fireplace to cover a spacing between the floor structure and the first and second side members, respectively, such that the first and second overlap members appear to support the weight of

the decorative surround. The cited references fail to provide the limitations of claim 26 as amended for at least reasons similar to those described above in association with claim 1. As such, claim 26 is allowable over the cited references.

Claim 29 as amended relates, in part, to an adjustable size decorative surround for a fireplace, the surrounding including a retaining bracket having a surround mount portion secured to a top member and a wall engagement portion extending outwardly away from the top member. The surround also includes a wall mounting bracket having a wall mount portion configured to extend along and be secured to a front surface of at least one of a fireplace and a wall structure adjacent to the fireplace and a surround engagement portion extending outward and upward from the wall mount portion to engage the wall engagement portion of the retaining bracket. The cited references fail to provide the limitations of claim 29 as amended for at least reasons similar to those described above in association with claim 15. As such, claim 29 is allowable over the cited references.

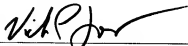
Conclusion

In sum, all grounds for objections and rejections forwarded in the Office Action have been traversed. Withdrawal of the rejections, allowance of claims 1, 7-12, and 14-30, and notice to that effect are respectfully requested. The Examiner is invited to contact the undersigned at the number below to facilitate prosecution of this matter.

Respectfully submitted,

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